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1 Q. Christopher Chaney?
 2 A. I think I interviewed Christopher Chaney
 3 actually at Charles Street jail once.
 4 Q. Do you know if you took any notes of that
 5 interview?
 6 A. I don't know.
 7 Q. Mervin Reese?
 8 A. Maybe it was Mervin Reese that I interviewed at
 9 the Charles Street jail. I have a recollection
 10 of interviewing one of these two kids at the
 11 Charles Street jail.
 12 Q. Romero Holiday?
 13 A. I may have interviewed Romero Holiday. I know
 14 that Romero Holiday was a Castlegate who may
 15 have been -- he may have been the kid that was
 16 hospitalized and was part of the reason for the
 17 ongoing dispute between the Humboldts and the
 18 Castlegates.
 19 Q. If I was to tell you that one of the theories
 20 was that this was retribution, that was put
 21 forth at trial, was that this was retribution
 22 for the stabbing of Romero Holiday or shooting
 23 of Romero Holiday --
 24 A. I don't know if it was a stabbing or a
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1 shooting, but that would be consistent with
 2 what my belief was at the time.
 3 Q. Do you acknowledge that there were various
 4 witnesses in the pretrial discovery and at
 5 trial that indicated that they observed Shawn
 6 Drumgold and Terrance Taylor at a hospital room
 7 of Romero Holiday where retribution was
 8 discussed?
 9 MS. SCAPICCHIO: Objection.
 10 A. I don't recall that retribution was discussed.
 11 I do recall some evidence that Taylor and/or
 12 Drumgold were at Romero Holiday's hospital
 13 room.
 14 Q. Do you acknowledge that the witnesses to that
 15 incident, the hospital room incident, were very
 16 important to be interviewed in the defense of
 17 your case?
 18 MS. SCAPICCHIO: Objection.
 19 A. I don't remember.
 20 Q. Did you ever ask Shawn Drumgold whether or not
 21 he was at a hospital room at any time visiting
 22 Romero Holiday?
 23 MS. SCAPICCHIO: Objection.
 24 A. I don't remember.
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1 Q. If he provided you that information, would you
 2 have reduced that to notes?
 3 MS. SCAPICCHIO: Objection.
 4 A. I don't know. Let me say this. If it was
 5 inculpatory of my client, I might not have.
 6 Q. Might not have asked or might not have
 7 reduced --
 8 A. Might not have reduced to writing.
 9 Q. Did you interview or interview on anyone's
 10 behalf Tyrone Brewer?
 11 A. I don't remember.
 12 Q. Willie Simms?
 13 A. Was that the guy up on the second floor? That
 14 was the guy on the second floor that I
 15 interviewed.
 16 Q. Donald Wilson?
 17 A. Don't remember.
 18 Q. Rodney Sadbury?
 19 A. Don't remember.
 20 Q. Troy Jenkins?
 21 A. Don't remember.
 22 Q. Paul Durand?
 23 A. I know I interviewed Paul Durand at some point.
 24 Q. Did you interview him with his attorney
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1 present?
 2 A. Don't remember.
 3 Q. Do you know if he had an attorney at any time?
 4 A. I don't remember.
 5 Q. Did you take notes at that interview?
 6 A. I don't remember.
 7 Q. Do you acknowledge that Paul Durand was an
 8 important witness to support the alibi defense
 9 of Shawn Drumgold?
 10 MS. SCAPICCHIO: Objection.
 11 A. I believe so.
 12 Q. Do you acknowledge that it was prudent to write
 13 down any notes of any interviews of Paul
 14 Durand?
 15 MS. SCAPICCHIO: Objection.
 16 A. As I recall, Paul Durand was somebody that was
 17 friendly with either Taylor or Drumgold, and it
 18 would not have been imperative to write
 19 anything down.
 20 Q. Did you interview Rena Roisten or any of the
 21 Roistens?
 22 A. I don't remember.
 23 Q. Did you interview Lisa Graham?
 24 A. I don't think so.
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1 Q. Did you interview Obie Graham?
 2 A. Don't remember.
 3 Q. Did you interview Kathy Jamison, Monty?
 4 A. Don't remember.
 5 Q. Did you interview Michelle Payne?
 6 A. Don't remember. I do as we're sitting here
 7 have some recollection of going to a number of
 8 different houses one day looking for a lot of
 9 these people that you mentioned. When I say "a
 10 lot of these people," a lot of the witnesses to
 11 the shooting, alleged witnesses to the
 12 shooting.
 13 Q. Do you acknowledge that there was a group of
 14 individuals that supported Drumgold's alibi at
 15 23 Sonoma Street?
 16 MS. SCAPICCHIO: Objection.
 17 A. Yes.
 18 Q. Do you acknowledge that that was where the
 19 Grahams and the Paynes resided?
 20 MS. SCAPICCHIO: Objection.
 21 A. The Grahams, yes. I don't remember the Paynes.
 22 Q. Same family, different --
 23 A. For other reasons I was questioned about, I
 24 guess, Lisa Graham a few years ago.
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1 Q. Did you interview Antonio Anthony?
 2 A. I believe so.
 3 Q. Did you take notes?
 4 A. I don't know.
 5 Q. Was he in custody or did you interview him
 6 somewhere else?
 7 A. I don't remember.
 8 Q. Do you recall whether or not anyone was present
 9 with you?
 10 A. I don't remember.
 11 Q. Is there anything that would refresh your
 12 memory regarding the interviews of these
 13 witnesses?
 14 A. I don't think so.
 15 Q. Other than your file, your original file?
 16 A. Well --
 17 MS. SCAPICCHIO: Objection.
 18 A. If my original file had notes of interviews,
 19 well, that would perhaps give me some more
 20 insight into what transpired at the time. Just
 21 being questioned does jog certain things, but
 22 it's been a long time.
 23 Q. Do you acknowledge that you were aware that
 24 Antonio Anthony and Terrance Taylor had girl
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<p>124</p> <p>1 friends that lived at 23 Sonoma Street?</p> <p>2 MS. SCAPICCHIO: Objection.</p> <p>3 A. I don't remember that Anthony had a girl friend</p> <p>4 there, but I do remember that Anthony was</p> <p>5 supposedly there with Taylor, and I don't</p> <p>6 remember if Drumgold was inside or outside.</p> <p>7 Q. Do you have a memory that Adrina Payne and</p> <p>8 Michelle Payne were the girl friends of</p> <p>9 Antonio Anthony and Terrance Taylor?</p> <p>10 MS. SCAPICCHIO: Objection.</p> <p>11 A. I don't remember.</p> <p>12 Q. Did you discuss with any witnesses the</p> <p>13 relationship between the residents at 23 Sonoma</p> <p>14 Street and the defendants in this case?</p> <p>15 MS. SCAPICCHIO: Objection.</p> <p>16 A. Could you repeat that?</p> <p>17 Q. Did you discuss with anybody the relationship</p> <p>18 between the residents of 23 Sonoma Street and</p> <p>19 the defendants in this case, Terrance Taylor</p> <p>20 and Shawn Drumgold?</p> <p>21 MS. SCAPICCHIO: Objection.</p> <p>22 A. I'm sure I had discussions along those lines</p> <p>23 with Mr. George, and I'm sure I had discussions</p> <p>24 along those lines with Mr. Drumgold. I don't</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>	<p>127</p> <p>1 witnesses tend to be people that are motivated</p> <p>2 to protect the people they're testifying for.</p> <p>3 That's why if you can avoid an alibi defense</p> <p>4 sometimes that's the best thing to do.</p> <p>5 Q. Did you inquire of Shawn Drumgold what his</p> <p>6 relationship was with Terrance Taylor?</p> <p>7 MS. SCAPICCHIO: Objection.</p> <p>8 A. I must have.</p> <p>9 Q. What did Drumgold tell you?</p> <p>10 MS. SCAPICCHIO: Objection.</p> <p>11 A. I don't remember.</p> <p>12 Q. Do you acknowledge that Drumgold and Taylor</p> <p>13 were friends before this incident occurred and</p> <p>14 were friends?</p> <p>15 MS. SCAPICCHIO: Objection.</p> <p>16 A. Certainly that they were friendly.</p> <p>17 Q. Did you ever ask them in regards to any drug</p> <p>18 dealing activity whether or not they were</p> <p>19 involved in it together?</p> <p>20 MS. SCAPICCHIO: Objection.</p> <p>21 A. No. I wasn't aware of anything along those</p> <p>22 lines.</p> <p>23 Q. Do you acknowledge that there was a connection</p> <p>24 to Castlegate and 23 Sonoma which would have</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>
<p>125</p> <p>1 remember them, though.</p> <p>2 Q. Any other independent witnesses?</p> <p>3 A. Maybe Mr. Durand, maybe Mr. Anthony. I just</p> <p>4 don't remember.</p> <p>5 Q. Did you have any discussions in regards to the</p> <p>6 relationship between the residents at 23 Sonoma</p> <p>7 Street and any Castlegate members?</p> <p>8 MS. SCAPICCHIO: Objection.</p> <p>9 A. That I don't remember.</p> <p>10 Q. Would you acknowledge that that would be an</p> <p>11 important piece of information to have in</p> <p>12 determining whether or not to put on that</p> <p>13 particular alibi defense on behalf of Drumgold</p> <p>14 or Taylor?</p> <p>15 MS. SCAPICCHIO: Objection.</p> <p>16 A. I think that if the determination were made,</p> <p>17 was made that the alibi defense was valid, then</p> <p>18 I don't think I would have been deterred by a</p> <p>19 connection between the inhabitants of 23 Sonoma</p> <p>20 and the Castlegates. That's all I can say. If</p> <p>21 I believed the alibi, then I wouldn't have</p> <p>22 allowed the -- nothing is black and white or</p> <p>23 perfectly good or perfectly bad.</p> <p>24 Q. Do you acknowledge that if there was a</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>	<p>128</p> <p>1 supported the theory of the Commonwealth's case</p> <p>2 that it would have been a strategic mistake to</p> <p>3 present as alibi witnesses those individual</p> <p>4 residents at 23 Sonoma Street?</p> <p>5 MS. SCAPICCHIO: Objection.</p> <p>6 A. You know, prospectively I think you have to</p> <p>7 leave it on the back burner even though there</p> <p>8 may be a downside. Those are the strategic</p> <p>9 decisions you make during trial depending upon</p> <p>10 other evidence in the case. I don't think you</p> <p>11 can just look at something and say, well,</p> <p>12 because it's got a certain negative to it it</p> <p>13 shouldn't be presented. I think sometimes your</p> <p>14 back is to the wall, and sometimes things are</p> <p>15 going your way. I think it depends.</p> <p>16 Q. Best case scenario, you have someone that has</p> <p>17 an alibi that doesn't know the defendants,</p> <p>18 correct?</p> <p>19 A. Correct. Best case scenario you have an</p> <p>20 official record to back up your client that he</p> <p>21 was in jail or being operated on at the time of</p> <p>22 the crime.</p> <p>23 Q. Do you acknowledge that throughout trial your</p> <p>24 strategies sometimes and who you call as</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>
<p>126</p> <p>1 relationship between members of Castlegate and</p> <p>2 residents of 23 Sonoma Street that supported</p> <p>3 the alibi of Shawn Drumgold and Terrance Taylor</p> <p>4 that that fact would diminish the effectiveness</p> <p>5 of the alibi defense?</p> <p>6 MS. SCAPICCHIO: Objection.</p> <p>7 A. It could have had that effect upon the fact</p> <p>8 finder. I think that's what I was saying</p> <p>9 before about nothing being a hundred percent</p> <p>10 black or white.</p> <p>11 Q. In your opinion what relationships would impact</p> <p>12 and diminish the effectiveness of the alibi if</p> <p>13 there was one between Castlegate and 23 Sonoma?</p> <p>14 MS. SCAPICCHIO: Objection.</p> <p>15 A. I don't know. It's always better to have an</p> <p>16 alibi witness that's not associated with a</p> <p>17 particular individual, but it's been my</p> <p>18 experience that when a person says they're at a</p> <p>19 certain place at three o'clock in the morning</p> <p>20 it's probably their girl friend or their wife</p> <p>21 or their mother that's going to be the alibi</p> <p>22 witness, and of course they don't want to see</p> <p>23 anything happen to their boyfriend, lover, or</p> <p>24 husband or son, but that's what -- alibi</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>	<p>129</p> <p>1 witnesses changes because of certain evidence?</p> <p>2 A. Absolutely.</p> <p>3 MS. SCAPICCHIO: Objection.</p> <p>4 Q. Relative to the alibi defense, if you have a</p> <p>5 particular number of witnesses that can support</p> <p>6 an alibi defense, Shawn Drumgold in this case,</p> <p>7 that at some point in time you make choices of</p> <p>8 who you put on to support the alibi versus who</p> <p>9 you don't put on?</p> <p>10 MS. SCAPICCHIO: Objection.</p> <p>11 A. That's fair to say.</p> <p>12 Q. One of the choices was to put on Terrance</p> <p>13 Taylor to support the alibi defense of Shawn</p> <p>14 Drumgold?</p> <p>15 MS. SCAPICCHIO: Objection.</p> <p>16 A. Well, if Terrance Taylor was to testify that he</p> <p>17 was with Shawn Drumgold at the time of the</p> <p>18 crime and that there's not even a scintilla of</p> <p>19 evidence, certainly not enough evidence to put</p> <p>20 Terrance Taylor at the scene of the crime, that</p> <p>21 would be helpful to Shawn Drumgold.</p> <p>22 Q. In fact, you called Paul Durand for purposes of</p> <p>23 supporting the alibi defense?</p> <p>24 A. That's probably true. I don't remember exactly</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>

Depo of Steven Rappaport, Vol 1, 6/4/06, Drumgold, City of Boston

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1 as I sit here why I called Paul Durand, but I
 2 think that would have been the reason.
 3 Q. Do you have any memory as you sit here today of
 4 making a conscious decision not to put on
 5 certain witnesses in support of the alibi?
 6 MS. SCAPICCHIO: Objection.
 7 A. I do think that there was a point during the
 8 trial when Terrance Taylor really did shock us
 9 -- when I say "us," I mean shock me -- by
 10 claiming his Fifth Amendment privilege when I
 11 said, Do you know Shawn Drumgold, that anybody
 12 who I viewed as more related to Taylor than to
 13 Drumgold, that was going to be a dangerous
 14 course of action at that point. That was
 15 happening bing-bing as I recall. The
 16 Commonwealth had rested, and it was all
 17 happening very fast. I was truly in shock when
 18 Taylor took the Fifth, and as a result I
 19 wondered whether I could trust anybody who was
 20 associated with Taylor.
 21 Q. The individuals that were associated with
 22 Taylor were the residents of 23 Sonoma Street?
 23 MS. SCAPICCHIO: Objection.
 24 A. My memory is they certainly were more
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1 associated with Taylor than with Drumgold.
 2 Q. In fact, Taylor's girl friend was a resident of
 3 23 Sonoma Street, correct?
 4 MS. SCAPICCHIO: Objection.
 5 A. As I recall.
 6 Q. Her sister was a resident of 23 Sonoma Street?
 7 MS. SCAPICCHIO: Objection.
 8 A. As I recall.
 9 Q. Two individual witnesses that allegedly walked
 10 from the homicide scene of Tiffany Moore to
 11 23 Sonoma Street, Obie Graham, the brother of
 12 Terrance Taylor's girl friend, was a resident
 13 at 23 Sonoma Street?
 14 MS. SCAPICCHIO: Objection.
 15 A. As I recall, the people at 23 Sonoma Street
 16 were much more closely aligned in terms of
 17 friendship with Taylor than with Drumgold. As
 18 I recall as well, the allegation was that
 19 Drumgold was actually waiting outside; he
 20 wasn't even in the house. I could be wrong on
 21 that, but it's my best memory that Drumgold was
 22 waiting outside for Taylor.
 23 Q. Do you also acknowledge that a witness,
 24 Gemini Hullum, was also a resident of 23 Sonoma
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1 A. I don't know how active Mr. Groob was
 2 throughout the trial. I don't remember him
 3 being a factor.
 4 Q. What was your experience prior to this trial
 5 with Judge Alberti?
 6 A. I always had a great deal of respect for
 7 Alberti. I knew that he was tough. But I had
 8 some matter before him before this case that as
 9 tough as he was I thought he was reasonable,
 10 although his reputation was he was a real hard
 11 nut, but I actually had a decent experience
 12 with him. And there was a point at which I
 13 believe Mr. Beauchesne and I were trying to
 14 agree on a judge for the case, and I thought
 15 Alberti would be a good choice because it's a
 16 first degree murder case, sentencing -- Alberti
 17 had a reputation of being a heavy sentencer,
 18 but sentencing really doesn't matter in a first
 19 degree murder case. My view of the case was
 20 it was either going to be murder or not guilty.
 21 Alberti was from the Berkshires, and as he
 22 said to us, Is there any publicity on this
 23 case, when he first met with me and Phil, and
 24 we looked at him like he had two heads and he
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1 said, Where I come from we read The New York
 2 Times; we don't read The Boston Globe. So that
 3 was my experience with Alberti.
 4 Q. As a trial attorney, did you consider
 5 Judge Alberti to be fair and flexible relative
 6 to witness issues and presentation of your
 7 case?
 8 MS. SCAPICCHIO: Objection.
 9 A. He was a pleasure to try with in terms of being
 10 reasonable with lawyers and their problems and
 11 understanding that, you know, it's the real
 12 world. I found him to be a very good trial
 13 judge in that sense and I think the type of
 14 trial judge anyone in this room would
 15 appreciate for issues, personal issues or
 16 lawyer issues that come up during a case.
 17 I thought that he was very decent in terms
 18 of his demeanor towards my client and
 19 Mr. Taylor. I remember that he allowed them on
 20 the view on the bus with the jurors as long as
 21 they promised -- I remember at least as long as
 22 my client promised to stay between me and the
 23 court officer while we were on the view he had
 24 no problem with Mr. Drumgold being on the view,
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1 which I thought was decent.
 2 Until the Chaney/Reese issue surfaced I
 3 actually thought I was getting a very fair
 4 trial. That's when I felt the thumb on the
 5 scale.
 6 Q. Relative to witness issues and problems that
 7 trial lawyers have on numerous cases, did you
 8 consider Judge Alberti to be fair relative to
 9 the coordination of witnesses or problems that
 10 come up in cases?
 11 MS. SCAPICCHIO: Objection.
 12 A. Yes, I did.
 13 Q. Do you acknowledge that Judge Alberti was not
 14 too pleased when Taylor took the Fifth on the
 15 stand in front of the jury?
 16 MS. SCAPICCHIO: Objection.
 17 A. I don't remember. I just remember feeling like
 18 somebody just punched me in the stomach. I
 19 don't think that type of incident had ever
 20 occurred to me, had ever occurred to me, for
 21 me, whatever. I never had, like, that feeling
 22 that a brother or sister lawyer on my side of
 23 the fence had stabbed me in the back. I felt,
 24 you know, that in the past I've had some
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1 Street living with the Graham family?
 2 MS. SCAPICCHIO: Objection.
 3 A. I remember the name. I don't remember Gemini's
 4 relation to the case.
 5 Q. If she was a resident of 23 Sonoma Street, you
 6 would have had the same concern that after
 7 Taylor took the Fifth whether or not there
 8 would be further damage to your case if you
 9 called the residents of 23 Sonoma Street?
 10 MS. SCAPICCHIO: Objection.
 11 A. Again, best memory, the alibi defense in the
 12 case was part of that distribution or divvying
 13 of labor that Mr. George took up to a greater
 14 extent than I did, whereas I went after the
 15 third-party culprit. That's my memory.
 16 At this point I think that I lost all
 17 trust and faith in Mr. George, more so than
 18 Mr. Taylor. I never begrudged Mr. Taylor for
 19 doing what he did on advice of counsel other
 20 than you wonder about character, but putting
 21 that aside for a second at that point I decided
 22 that I couldn't trust Mr. George or anything
 23 that he did in the case.
 24 Q. Still had an active investigator assigned?
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1 uncomfortable situations with prosecutors where
 2 I felt I caught them cheating during a trial,
 3 but I had never, ever experienced a brother or
 4 sister defense attorney basically stabbing me
 5 the back. That's what I felt happened in that
 6 case.
 7 Q. Do you acknowledge that in your opinion that
 8 had an effect on the jury in regards --
 9 MS. SCAPICCHIO: Objection.
 10 Q. -- to the consideration of Shawn Drumgold's
 11 guilt or innocence?
 12 MS. SCAPICCHIO: Objection.
 13 A. I think that it may have had an effect. I know
 14 that at the time I was like -- I was not happy.
 15 But that may have had an effect.
 16 Q. Based on your testimony here today and how it
 17 impacted you as a trial lawyer and it never
 18 happened again, do you acknowledge that it was
 19 clear to you and your concern the effect it had
 20 on the jury?
 21 MS. SCAPICCHIO: Objection.
 22 A. I don't think it was as important to me in that
 23 sense as it was on a very personal level.
 24 Mr. George and I had spent a great deal of time
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1 was directed out, so it would have been after
 2 the case was directed out against him.
 3 Q. In fact, that was the last day of evidence?
 4 A. As I think about it, that's consistent.
 5 Q. And closing arguments went on --
 6 A. The following day.
 7 Q. -- following two days or following day?
 8 A. I think it was the following day.
 9 Q. Do you have any memory as you sit here today
 10 why you called Shawn Drumgold before you called
 11 Terrance Taylor?
 12 A. No.
 13 Q. Was there a particular --
 14 A. There may have been -- the jury is not stupid.
 15 They see the defendants sitting in the
 16 courtroom, and he could be shaping his
 17 testimony based upon what people before him
 18 say. Feeling fairly confident as to what
 19 Taylor would say because, don't forget, Taylor
 20 gave a complete statement, I don't think I was
 21 worried about Taylor's statement and that -- I
 22 don't remember calling Taylor before Drumgold
 23 or Drumgold before Taylor, but, once again, I
 24 had a sense of what Taylor was going to testify
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1 working together, I thought that Mr. George --
 2 up until that time I never had any negative
 3 experiences with him. I thought he was top
 4 knit counsel. I thought he was of the right
 5 spirit. Basically up until that moment I
 6 trusted the guy. I think I'm a fairly good
 7 judge of character, and I said, whoa, I think I
 8 made a mistake here.
 9 Q. Did you move for a mistrial?
 10 A. I don't remember. It would have been by my own
 11 doing. I don't know that I had any right to a
 12 mistrial at that point because I was the one
 13 who called the witness.
 14 Q. Did you seek a continuance at that time to
 15 regroup relative to any trial strategy?
 16 A. I don't remember. I don't think I had to
 17 regroup that badly. During the course of the
 18 trial, any trial that goes for a few weeks,
 19 there are going to be moments that one thinks
 20 is a bad moment in the trial. That was a bad
 21 moment in this trial. That's all I can say. I
 22 think it might have been more personal,
 23 professional/personal than case related.
 24 Q. You had conducted a voir dire already of
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1 to because I assumed he would testify
 2 consistently with his original statement to the
 3 police. But I thought that that happened
 4 before I called Drumgold. Actually I thought
 5 Drumgold was the last witness, but maybe I'm
 6 wrong.
 7 Q. Do you have any memory today of any reasons why
 8 you didn't ask Alberti for an afternoon or a
 9 day to regroup relative to the alibi defense
 10 issue before making a decision whether to call
 11 Drumgold or any other witnesses?
 12 MS. SCAPICCHIO: Objection.
 13 A. I didn't feel a need to regroup. I think that
 14 I would have discussed with Shawn, bearing in
 15 mind what had just happened with Taylor,
 16 whether or not we should take the risk of
 17 calling anyone else from the Taylor camp so to
 18 speak. I think we decided not to.
 19 Q. When you say "the Taylor camp," you're talking
 20 about --
 21 A. 23 Sonoma Street.
 22 Q. -- 23 Sonoma Street and any other individuals
 23 that were associated with Taylor?
 24 A. When I said "the Taylor camp," I meant the
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1 Terrance Taylor, correct?
 2 A. I don't remember.
 3 Q. I'll just tell you that the record shows that
 4 there was a voir dire conducted of Terrance
 5 Taylor on Day Nine on October 10th of 1989 that
 6 went in the transcript from Pages 193 to 209.
 7 Does that refresh your memory that there was a
 8 voir dire conducted of Taylor before he was
 9 called?
 10 A. That may be why I was as surprised as I was.
 11 It's my memory, again, it's so long ago, but my
 12 memory is that it was early in the morning when
 13 I called Taylor to the stand, and it was
 14 probably the day after he was directed out.
 15 And if there was a voir dire, it was the day
 16 after the voir dire. There was no indication
 17 whatsoever to me that he was going to assert a
 18 testimonial privilege.
 19 Q. The record indicates a voir dire on Day Nine of
 20 the trial, October 10th, and that you called
 21 Taylor to the stand on October 11th of 1989.
 22 A. That would comport with my memory. I don't
 23 remember the voir dire, but certainly he
 24 wouldn't have been voir dire'd until the case
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1 23 Sonoma Street group.
 2 MS. SCAPICCHIO: Objection.
 3 Q. At that point in time, after discussing it with
 4 Shawn Drumgold you both made a decision --
 5 A. Let me put it to you this way.
 6 MS. SCAPICCHIO: Objection.
 7 A. I believe I discussed it with Shawn. Whether I
 8 could say we both made a decision or he agreed
 9 with my decision, I do believe that the issue
 10 was discussed with Shawn.
 11 Q. You had submitted an affidavit previously in
 12 the motions for new trial relative to Lisa
 13 Graham that was a resident of 23 Sonoma Street
 14 that you never were provided any information on
 15 Lisa Graham and was not aware of her, is that
 16 correct?
 17 A. When I submitted the affidavit, what I said was
 18 so. Subsequent to submitting that affidavit it
 19 came to my attention that I had actually
 20 written to Mr. Beauchesne referencing Lisa
 21 Graham, I believe. So obviously what I said in
 22 the affidavit was factually incorrect.
 23 Q. During the course of this trial, there was a
 24 joint submission, correct, of the witness lists
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<p>142</p> <p>1 in the case?</p> <p>2 A. I believe so.</p> <p>3 Q. As part of the pretrial discovery phase, the</p> <p>4 judge made it incumbent upon Mr. Beauchesne to</p> <p>5 ensure that all law enforcement personnel</p> <p>6 appeared for the purpose of testimony; he</p> <p>7 coordinated that?</p> <p>8 MS. SCAPICCHIO: Objection.</p> <p>9 A. I think it made sense from a money standpoint.</p> <p>10 The Commonwealth was going to have to pay for</p> <p>11 it once or twice, so why not have them pay for</p> <p>12 it once. We would have used our subpoena</p> <p>13 power, and the money would have come from the</p> <p>14 Commonwealth, so why not. Again, understand</p> <p>15 that with regard to Mr. Beauchesne and counsel</p> <p>16 for the defendants, we were, I thought, trying</p> <p>17 to cooperate with each other.</p> <p>18 Q. There were mutual witnesses that you both</p> <p>19 wanted to call?</p> <p>20 A. Absolutely.</p> <p>21 Q. Mary Alexander, Tracie Peaks, there's a whole</p> <p>22 list of them, that you both submitted and</p> <p>23 wanted and you merged them, correct?</p> <p>24 A. Yes.</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>	<p>145</p> <p>1 Q. You don't have any files on your personal</p> <p>2 computer at home --</p> <p>3 A. No.</p> <p>4 Q. -- relative to Drumgold?</p> <p>5 A. Absolutely not.</p> <p>6 Q. There's no other computers other than your work</p> <p>7 computers that would contain any of the</p> <p>8 Drumgold files? I'm not talking about old</p> <p>9 computers --</p> <p>10 A. I want to say in 2002 I left my partnership</p> <p>11 that I had been in at the time of the Drumgold</p> <p>12 trial.</p> <p>13 Q. Who was your partnership?</p> <p>14 A. It would have been Rappaport, Pinta, and</p> <p>15 Eggert, E-G-G-E-R-T.</p> <p>16 Q. Are they still in existence?</p> <p>17 A. Pinta and Eggert exist right around the corner</p> <p>18 on Milk Street.</p> <p>19 Q. Did you inquire of Pinta and Eggert whether or</p> <p>20 not there was any files from the Drumgold --</p> <p>21 I think I have -- I'm positive that all the</p> <p>22 files that existed in the old office I</p> <p>23 presently have.</p> <p>24 Q. Do you have a problem with us communicating</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>
<p>143</p> <p>1 Q. And the Court expected cooperation from the</p> <p>2 counsel in the case to do a joint effort to</p> <p>3 subpoena and summons witnesses to appear as</p> <p>4 opposed to multiple?</p> <p>5 A. We were trying to coordinate the appearance of</p> <p>6 witnesses, no question.</p> <p>7 Q. In fact, the clerks office in Suffolk Superior</p> <p>8 Court were issuing subpoenas to witnesses prior</p> <p>9 to trial and during the trial?</p> <p>10 A. As I recall, that was one of the things that I</p> <p>11 really appreciated about Judge Alberti. He</p> <p>12 wanted to make it as easy on the lawyers as</p> <p>13 possible so they could pay attention to what</p> <p>14 was going on in the courtroom.</p> <p>15 Q. In fact, you had access to the subpoenas and</p> <p>16 knew who was being subpoenaed to come in to</p> <p>17 testify, correct?</p> <p>18 MS. SCAPICCHIO: Objection.</p> <p>19 A. I don't recall any major surprises.</p> <p>20 Q. If Phil Beauchesne during the course of the</p> <p>21 trial was issuing subpoenas to witnesses, he</p> <p>22 was providing that information to you?</p> <p>23 A. As I just said, I don't recall being surprised</p> <p>24 by any witnesses that appeared.</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>	<p>146</p> <p>1 with Pinta and Eggert to determine whether or</p> <p>2 not there is any documents, hard files or</p> <p>3 computer files, in existence in their office</p> <p>4 relative to Shawn Drumgold?</p> <p>5 A. I have no problem.</p> <p>6 Q. If necessary, would you authorize them to</p> <p>7 disclose that information to us?</p> <p>8 A. Sure. That's not a problem.</p> <p>9 Q. Who would be the best person to contact there?</p> <p>10 A. I don't think they like me very much. That's</p> <p>11 the problem. Eggert would probably be the one</p> <p>12 because Eggert has no axe to grind. Pinta</p> <p>13 wouldn't be so happy to do anything that</p> <p>14 involved me.</p> <p>15 Q. Do you acknowledge that this is an affidavit</p> <p>16 that was prepared --</p> <p>17 A. Yes, absolutely. I signed and dated that.</p> <p>18 Q. Do you acknowledge this is an affidavit</p> <p>19 prepared by Ms. Scapicchio for you to execute</p> <p>20 for the purposes of the motion for new trial</p> <p>21 hearing?</p> <p>22 MS. SCAPICCHIO: Objection.</p> <p>23 A. As I said before, I don't know who prepared it.</p> <p>24 Q. Is it fair to say it wasn't David Meier or the</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>
<p>144</p> <p>1 (Exhibit No. 59, Affidavit, marked for</p> <p>2 Identification.)</p> <p>3 Q. Showing you what's been marked as Exhibit</p> <p>4 No. 59.</p> <p>5 A. This is the affidavit that was submitted in</p> <p>6 December, I believe, of 2002.</p> <p>7 Q. Did you draft this affidavit?</p> <p>8 A. I know I signed and dated it. I don't know</p> <p>9 whether or not that was produced on my machine</p> <p>10 or whether or not -- but it does look like it's</p> <p>11 from my machine.</p> <p>12 Q. Is it fair to say that you have searched your</p> <p>13 computer for any documents?</p> <p>14 A. Oh, yeah. It would be --</p> <p>15 Q. I make a representation to you, and you can</p> <p>16 review the documents if you choose, that that</p> <p>17 affidavit is not contained in the documents</p> <p>18 that you provided today.</p> <p>19 A. Okay. Then it wasn't produced on my computer.</p> <p>20 Q. If you produced it personally, you or someone</p> <p>21 at your request, it would be on your computer?</p> <p>22 A. If I had actually drafted it or a secretary or</p> <p>23 associate or partner had drafted it, it should</p> <p>24 be on my computer, and it's not.</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>	<p>147</p> <p>1 Commonwealth of Massachusetts that prepared</p> <p>2 this affidavit?</p> <p>3 A. It was not David Meier and the Commonwealth of</p> <p>4 Massachusetts.</p> <p>5 Q. If it was not David Meier and the Commonwealth</p> <p>6 of Massachusetts or your office --</p> <p>7 A. It would have been Ms. Scapicchio's office.</p> <p>8 Q. Is it fair to say that you reviewed the</p> <p>9 affidavit and signed it?</p> <p>10 A. Yes, I did.</p> <p>11 Q. At the time you executed this affidavit, you</p> <p>12 believed it to be accurate?</p> <p>13 A. That's correct.</p> <p>14 Q. Is it fair to say you didn't have the luxury of</p> <p>15 viewing your file?</p> <p>16 A. No. I had the luxury of reviewing documents</p> <p>17 that Mr. Meier had in his file. One of those</p> <p>18 documents, I believe, was a letter that I had</p> <p>19 drafted just prior to trial to Mr. Beauchesne.</p> <p>20 Q. I'm talking about when you executed this, not</p> <p>21 at the hearing, you did not have the luxury of</p> <p>22 reviewing the documents, witness statements or</p> <p>23 any correspondence?</p> <p>24 A. I didn't have any.</p> <p>(781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>

<p style="text-align: right;">148</p> <p>1 Q. Based on the time of your willingness to 2 cooperate in Shawn Drumgold seeking a new 3 trial, you read this, believed it to be 4 accurate, and executed it? 5 A. That's correct. 6 Q. Subsequent to that you were produced and 7 provided transcripts and correspondence that 8 determined that you, in fact, had in your 9 possession Olisa Graham's statement? 10 A. My memory is that prior to the beginning of the 11 actual hearing Mr. Meier was a gentleman and 12 said, Look, Steve, take a look at this. I 13 said, Oh, I guess I was wrong. 14 Q. When you were shown by Mr. Meier the 15 correspondence of Phil Beauchesne and letter 16 from Phil Beauchesne, that verified that, in 17 fact, you were aware of Olisa Graham and you 18 were aware that she supported Shawn Drumgold's 19 alibi? 20 MS. SCAPICCHIO: Objection. 21 A. Obviously I was aware of Olisa Graham. If 22 Mr. Beauchesne sent me a tape, I listened to 23 the tape. At some point I was aware of Olisa 24 Graham. I don't remember what she said. (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>	<p style="text-align: right;">151</p> <p>1 Q. Did the Commonwealth call any rebuttal -- 2 A. I don't remember. 3 Q. -- witnesses? 4 A. I don't remember. They may have. 5 Q. Do you recall whether or not you rested on the 6 last day, October 11th, or on the morning when 7 you did your closing arguments on the 12th? 8 A. My memory -- my best memory is that the case 9 closed and we argued the following day because, 10 as I recall, there would have been a charge 11 conference, a number of things that would have 12 occurred before closing arguments. 13 Q. Do you recall whether or not Alberti held the 14 charge conference before any of the evidence 15 rested as some judges will do during the course 16 of the trial when there's a break in witnesses? 17 A. My best memory is that did not happen, that it 18 was at the end of the case, but again -- 19 Q. There was no record of the charge conference, 20 correct? 21 A. I don't know. 22 Q. Was it done in chambers without a stenographer? 23 A. I thought it was done in open court. But if it 24 was done in chambers -- Judge Alberti did have (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>
<p style="text-align: right;">149</p> <p>1 That's why I said when you said the part about 2 it supported Drumgold's alibi I don't remember 3 the substance. 4 Q. Prior to the trial you were in possession of 5 Olisa Graham's transcribed statement and tape 6 of that statement? 7 A. I believe so. 8 Q. As supported by correspondence from you to 9 Phil Beauchesne and from Phil Beauchesne to 10 you? 11 A. Yeah. As we sit here today, I agree with the 12 statement that I had that information. 13 Q. As you sit here today, you agree that any 14 statement that was provided to you you read and 15 listened to the tape? 16 A. Correct. 17 Q. If the substance of that statement supported 18 Shawn Drumgold's alibi at the time of the 19 trial, you acknowledge that you had that 20 information relative -- 21 MS. SCAPICCHIO: Objection. 22 Q. -- to Olisa Graham supporting the alibi of 23 Shawn Drumgold? 24 MS. SCAPICCHIO: Objection. (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>	<p style="text-align: right;">152</p> <p>1 Mr. Drumgold in chambers I know during 2 post-trial proceedings. I don't know 3 whether -- I would hope that Mr. Drumgold would 4 have been there. 5 Q. Do you have any memory of any time during the 6 course of the trial indicating to the Court or 7 to Mr. Beauchesne would you issue a summons to 8 appear to any particular civilian witness? 9 A. I don't remember specifically. 10 (Exhibit No. 60, Subpoena, marked for 11 Identification.) 12 Q. Showing you what's been marked as Exhibit 60. 13 (Perusing document) I don't remember ever 14 seeing this before. I don't know when it was 15 issued. I don't know who it was -- I don't 16 know at whose request it was issued. Maybe it 17 was mine, but I don't know. 18 Q. For the record, Exhibit No. 60 is a copy of a 19 summons or subpoena that was issued to Lisa 20 Graham to appear for Wednesday, October 11th, 21 in the matter of Commonwealth v. Shawn 22 Drumgold. Do you acknowledge that's what this 23 document is? 24 A. That's what it purports to be. (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>
<p style="text-align: right;">150</p> <p>1 A. Yeah. A flows to B flows to C, but getting 2 back into whether or not at that point -- 3 whether or not at trial I would present it, if 4 Olisa Graham was associated with Terrance 5 Taylor that would have been -- I imagine that 6 would have been a reason why I would not have 7 presented it. 8 Q. In fact, if she was a resident or associated 9 with 23 Sonoma Street, you would not have 10 called her? 11 MS. SCAPICCHIO: Objection. 12 A. Probably correct, but, again, after Terrance 13 Taylor took the action that he took. 14 Q. During the course of the trial, all counsel at 15 the request of Alberti were coordinating the 16 trial witnesses and subpoenas and summonses? 17 MS. SCAPICCHIO: Objection. 18 A. As I've stated before, we tried to work 19 together. 20 Q. In fact, any trial subpoenas that were issued 21 were on some occasions joint subpoenas for 22 witnesses because you shared a common witness? 23 MS. SCAPICCHIO: Objection. 24 A. I think that occurred on some of the witnesses. (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>	<p style="text-align: right;">153</p> <p>1 Q. In fact, this was a document that was provided 2 in the course of discovery from the Suffolk 3 County District Attorney's office that's Bate 4 stamped 3002. Do you acknowledge that someone 5 involved in the trial of Commonwealth v. Shawn 6 Drumgold wished to call Lisa Graham and, in 7 fact, issued this summons? 8 A. I have no memory of the issuance of that 9 summons. I look at it and it says, Call 10 Mr. Beauchesne. But I just don't know. 11 Q. Again, relative to Lisa Graham and her 12 residence at 23 Sonoma Street, did you make a 13 conscious decision to avoid calling those alibi 14 witnesses based on strategy? 15 MS. SCAPICCHIO: Objection. 16 A. I don't have a distinct memory as to what my 17 thought process was with regard to Lisa Graham. 18 However, as I said before, considering the fact 19 that the people at 23 Sonoma Street were closer 20 to Taylor than they were to Drumgold once 21 Taylor asserted his Fifth Amendment privilege I 22 would have been very wary about calling anyone 23 from 23 Sonoma Street. 24 (Exhibit No. 61, Portion of Testimony, (781) 585-6741 FEDERAL COURT REPORTERS (978) 535-8333</p>